

REMARKS

Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested. Moreover, the applicant has reviewed the Non-Final Office Action of July 24, 2008, and submits that this paper is responsive to all points raised therein.

I. Status of the Claims

Claims 1, 2 and 5-44 are pending in the instant Patent Application.

Claims 1, 21, 24, 27, 30, 34, 36 and 38 have been amended. Support for these amendments is, for example, in drawing Figs. 1-3. The amendments are discussed below.

II. Rejections Under 35 USC 103(a)

A. Claims 1, 2, 5-11, 16, 19-22, 24, 25, 33-41, 43 and 44

Claims 1, 2, 5-11, 16, 19-22, 24, 25, 33-41, 43 and 44 were rejected under 35 USC 103(a) as unpatentable over Hohn (U.S. Patent No. 4,454,181) (Hohn '181) in view of Barrett (U.S. Patent 4,406,099) (Barrett '099).

Claims 1, 21, 34 and 35 have been further amended to recite a tile cap with an edge that is designed to conformingly rest over an edge of an existing tile (that is being capped by the claimed tile cap) along the surface of the existing tile. For example, as a result of this tile cap structure, the tile cap surface rises from the surface of the existing tile, along the exposed edge of the surface of the existing tile (the existing tile that has been capped by the tile cap).

Claims 24, 36 and 38 are method claims and have been amended similarly to the apparatus claims discussed above. That discussion is applicable to these claims.

Hohn '181 discloses a safety covering tile formed of a base 2 and a cover 3. The cover 3 fits over the base 2 at outwardly protruding ledges 15 of the base 2. A bend of the cover 3, fits over the ledge 15 to attach the cover 3 to the base 2.

Based on this arrangement of the cover with respect to the base, there is not any conformance of the edges, such that the edge of the cover 3 is resting over the edge of the base 3 along the surface of the base 3 in a conforming manner. Accordingly, Hohn '181 does not show or otherwise disclose in the context of the reference, the claimed subject matter.

Barrett '099 has been cited to show pressure sensitive adhesive associated with tiles. This reference discloses a unitized floor panel 10 to which wooden tiles 12 are joined to the unitary panel 10 by pressure sensitive adhesive 14, covered by a cover sheet 16. The cover is bound by the adhesive to the tiles 12 at a bonding strength sufficient to raise the tiles 12 to an even level once the panels 10 are set in the sub floor.

Based on the discussion above, Barrett '099 is silent as to any structure for capping the wooden tiles, and merely disclosing a pressure sensitive adhesive, fails to cure the deficiencies of Hohn '181.

Accordingly, the combination of Hohn '181 and Barrett '099 falls short of and fails to meet the limitations of claims 1, 21, 24, 34-36 and 38. As a result, Hohn '181 and Barrett '099, alone or in any combination, can not render claims 1, 21, 24, 34-36 and 38 obvious under 35 USC 103(a).

Since claims 1, 21, 24, 34-36 and 38 are not rendered obvious under 35 USC 103(a), by Hohn '181 and Barrett '099, claims 2, 5-11, 16, 19 and 20, 22 and 40, 25, 33 and 41, 37 and 43, and 39 and 44, respectively dependent thereon, are also not obvious under 35 USC 103(a) for the same reasons. These claims further distinguish over the cited art.

B. Claims 12-15, 23 and 26

Claims 12-15, 23 and 26 were rejected under 35 USC 103(a) as unpatentable over Hohn '181 in view of Barrett '099, in further view of Zinbarg (U.S. Patent No. 5,946,869) (Zinbarg '869).

These claims are all dependent on claims 1, 21 and 24, which as further amended, has been discussed above. That discussion is applicable here.

Hohn '181 and Barrett '099, alone and in combination, have been discussed above. Those discussions are also applicable here.

As discussed above, Hohn '181 and Barrett '099, alone or in combination, fail to meet all of the limitations of independent claims 1, 21 and 24.

Zinbarg '869, cited to teach double sided form tape adhesives and other adhesives, fails to cure the deficiencies of Hohn '181 and Barrett '099, alone or in combination.

Accordingly, Hohn '181 and Barrett '099, in further combination with Zinbarg '869, remains structurally deficient and fails to meet the recitations of claims 1, 21 and 24. As such, this combination of references fails to render claims 1, 21 and 24 obvious under 35 USC 103(a).

Since claims 1, 21 and 24 are nonobvious over Hohn '181 and Barrett '099, in view Zinbarg '869, claims 12-15, 23 and 26, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

C. Claims 17, 18, 27, 30 and 42

Claims 17, 18, 27, 30 and 42 were rejected under 35 USC 103(a) as unpatentable over Hohn '181 in view of Barrett '099, in further view of Stoneburner (U.S. Patent No. 3,359,574) (Stoneburner '574).

Claims 17 and 18 are dependent on claim 1. Claim 1, as amended has been discussed above. That discussion is applicable here.

Independent claims 27 and 30 are method claims that have been amended similarly to claims 1, 21, 34 and 35. The discussion of these amendments is above, and that discussion is applicable here.

Hohn '181 and Barrett '099, alone and in combination, have been discussed above. Those discussions are also applicable here.

As discussed above, Hohn '181 and Barrett '099, alone or in combination, fail to meet all of the limitations of independent claim 1. For the same reasons, these references fail meet all of the method limitations of claims 27 and 30.

Stoneburner '574, cited to teach bactericidal materials, fails to cure the deficiencies of Hohn '181 and Barrett '099.

Accordingly, Hohn '181 and Barrett '099, in combination with Stoneburner '574, remains structurally deficient with respect to claim 1, and fails to meet the method recitations of claims 27 and 30. As such, this combination of references fails to render claims 1, 27 and 30 obvious under 35 USC 103(a).

Since claims 1 and 30 are nonobvious over Hohn '181 and Barrett '099 in view Stoneburner '574, claims 17 and 18, and 42, dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

D. Claims 28, 29, 31 and 32

Claims 28, 29, 31 and 32 were rejected under 35 USC 103(a) as unpatentable over Hohn '181 in view of Barrett '099, in further view of Stoneburner '574 and Zinbarg '869.

Claims 28 and 29 are dependent on independent claim 27, that has been discussed above. That discussion is applicable here.

Claims 31 and 32 are dependent on independent claim 30, that has been discussed above. That discussion is applicable here.

Hohn '181, Barrett '099, Stoneburner '574 and Zinbarg '869, have all been discussed above, those discussions are applicable here.

Again, as stated above, the combination of Hohn '181 and Stoneburner '574 fails to result in methods employing a tile cap with an edge that is designed to conformingly rest over an edge of an existing tile (that is being capped by the claimed tile cap) along the surface of the existing tile. Stoneburner '574 and Zinbarg '869 disclose double sided adhesive and bacteriorstatic properties respectively, but fail to cure the deficiencies of the method from the Hohn '181-Barrett '099 combination.

For these reasons, the methods of claims 27 and 30 are not met by any combination of Hohn '181, Barrett '099, Stoneburner '574 and Zinbarg '869. Accordingly, claims 27 and 30 are non-obvious under 35 USC 103(a) in view of this cited art.

Since claims 27 and 30 are nonobvious over Hohn '181 and Barrett '099 in view Stoneburner '574 and Zinbarg '869, claims 28 and 29 and 312 and 32, respectively dependent thereon, are also allowable over this cited art for the same reasons. These claims further distinguish over this cited art.

III. Conclusion

The applicant also notes the Examiner's citation of Hensel, et al. (U.S. Patent No. 5,077,112), Bettinger (U.S. Patent No. 4,996,818), and Hensel, et al. (U.S. Patent No. 5,188,876) to complete the record.

Should the Examiner have any question or comment as to the form, content or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below.

Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Allowance of all pending claims, 1, 2 and 5-44, is respectfully requested.

The applicant believes that except for fees a Three (3) Month Extension of Time, no further fees are currently due. However, if any fee is deemed necessary in connection with this Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,
LATHROP & GAGE LLP

Date: January 23, 2009

By



Jerome R. Smith, Jr., Reg. No. 35,684
2345 Grand Boulevard, Suite 2400
Kansas City, Missouri 64108-2612
Tel: (816) 460-5306
Fax: (816) 292-2001
Attorney for Applicant